1945

File No. O. Wakf/45

Legal Department-

A **BRANCH**

Subject:—

Opinions under the Mussalman Wakf Act, 1923

(O. 45)

File No. O. Wakf/45

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C O N T E N T S.

Legal Department File No. C. Wakf / 1945.

S.No.	R.I. / C.No.	Subject	Pages.
		Mussalman Wakf Act, 1923.	
1.	1561 19.2.45. / 2230 20.3.45.	Whether it is necessary to amend section 6C of - in order to make the collector a party to every enquiry under the said Section...	1 - 2.
2.	3945 5.5.45. / 4138 30.5.45.	Bom. Mussalman Wakf Rules - rule 21(2) - Whether amendment of the Act is necessary for empowering either the Municipality or the Court to select one of the two members concerned.....	3 - 6.
3.	10110 15.11.45 / 9816 3.12.45.	(1) whether under cl.(1) of rule 23.- a secretary is to be appointed from amongst the members of the Wakf Committee. 2) Whether the appointment of a paid Secretary is ruled out.. ...	7 - 8.

5-Cs.

M.V.V. 12/7.

R.I.No.1561. Office of the R.L.A.
19.2.45.

Rule 12(2)(a) of the Bombay Mussalman Wakf Rules, 1936, gives the Court the power to permit the District Wakf Committee or the Collector to appear in order to assist the Court. That rule is intra vires. However it does not give the Committee or the Collector the status of a party on appearance. There is a difference between appearing as a party and appearing in order to assist the Court. If for administrative reasons it is desirable that the Court should have the larger power of requiring the Committee or the Collector to appear as a party, it will be necessary to amend the Act.

Id/- P.N.M.
19/3/45.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 2230, dated the 20th March 1945.

4-Cs.

M.V.V.
11/7.

3945 dated 5.5.45.

Submitted with reference to R.D. office note dated 3.5.1945(pages 3-4.ante).

2. The Bhagur Municipal district has been constituted under the Bombay District Municipal Act, 1901 (Bom.III of 1901) and, therefore, under the provisions of sec.6C(2)(d) of the Mussalman Wakf Act, 1923 (XLII of 1923), as amended by Bom.XVIII of 1935, the Bhagur Municipality is entitled to have one member elected by members professing Mussalman faith to the District Wakf Committee, in such manner as the Court may decide under rule 21(2) of the Bombay Mussalman Wakf Rules, 1936. There are 2 members professing Mussalman faith in the said Bhagur Municipality and none of them is prepared to vote for the other. Therefore it is not possible to have one member elected to the District Wakf Committee, as both of them wish to be such a member. In these circumstances, the D.J.,Nasik is of opinion that amendment of the Mussalman Wakf Act, 1923 is required for empowering either the Municipality or the Court to select one of the two members concerned. The R.D. considers (p.3) that this is a question for the Municipality to consider and the Court is not concerned. However, the R.L.A. has been requested to advise in the matter.

3. Under sec.6(L) (2) (d) of the Mussalman Wakf Act, 1923 (XLII of 1923), as amended by Bom.XVIII of 1923, a Wakf Committee in each district, is to consist inter alia, of one member elected in the prescribed manner by the members professing the Mussalman faith of each Municipality in the district constituted under the Bombay District Municipal Act, 1901. Under rule 21(2) of the Bombay Mussalman Wakf Rules, 1936, the Court is to ask inter alia, the district Municipalit to require such members of the said body as profess the Mussalman faith to elect in such manner as the Court shall decide their representative on the Wakf Committee under s.

P.T.O.

under s. 6L(§ 2) (d). In the present case, as there are two members of the Mussalman faith in the Bhagur Municipality and as both of them want to be members of the District Wakf Committee, the Court should ask the Bhagur Municipality to require both the said members to select their representative under the said rule 21(2) If both the members vote for themselves there will be a tie between the two members, in which case under the said rule 21(2) the Court may issue directions in the nature of paragraph 17 in Part I of the Govt. of India (Provinsial Legislative Assemblies) Order, 1936, that if, when a poll has been taken at an election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the President of the Bhagur Municipality to the Candi-date, selected by lot drawn in the presence of the said President in such manner as he may determine. Thus, it would be possible to have one member elected by the members of the Bhagur Municipality professing the Mussalman faith, as their representative within the meaning of s.6L(2)(d) of the Mussalman Wakf. Act., 1923, without any amendment of the said Act, for the said purpose.

ID/- B.D.P.
16/5/45.

4-Cs.

M.V.V.
11/7.

Office of the R.L.A.

Under Rule 21(2) of the Bombay Muslaman Wakf Rules, 1936, the Court can if it wishes issue a direction that in the event of equality of votes the result of election should be determined by lot.

Id/-
P.M.M.
29/5/45.

Remembrancer of Legal Affairs.

U.R. to R.D.NO. 4138, dated the 30th May 1945.

4-Cs.

M.V.V.
11/7.

R.L.No.10110 Office of the R.L.A.
15/17.11.45.

The questions raised for the R.L.A.'s consideration are :-

(1) Whether under clause (i) of rule 23 of the Bombay Mussalman Wakf Rules, 1936, a Secretary is to be appointed from amongst the members of the Wakf Committee; and

(2) Whether the appointment of a paid Secretary is ruled out.

2. Section 6-(c)(2) of the Mussalman Wakf Act, 1923, as amended by Bom. Act XVIII of 1935, provides that it shall be competent to the court to employ upon such terms and conditions as may be prescribed such persons as may in the opinion of the court be necessary for carrying out the purposes of the Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed. It is clear from this provision that the power to appoint any paid servant vests in the Court. This fact coupled with the fact that the Secretary is to be appointed by the Wakf Committee at its first meeting under rule 23(i) of the Bombay Mussalman Wakf Rules, 1936, would go to indicate that the Secretary so appointed would not be a permanent servant of the Committee nor can he be paid from the Wakf Administration Fund. Whether the person appointed as Secretary under rule 23(i) can be a member of the Wakf Committee or not is not clear, but there is no provision in the Act which precludes the appointment of an outsider as Secretary.

Sd/- P.M.M.
3/12/45.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9016 dated 3rd December 1945.

4-Cs.

M.V.V.
12/7.